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OFFICE OF PETITIONS

In re Application of	:	
Vicars	:	
Application No. 10/764,902	:	ON PETITION
Filed: January 26, 2004	:	
Attorney Docket No. 926512-95493	:	
For: SUCTION VALVE	:	

This is a decision on the reconsideration petition under 37 CFR 1.181, filed December 13, 2005, requesting withdrawal of the holding of abandonment. In the alternative, petitioners request revival under 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely submit a reply to the December 1, 2004 non-final Office action, which set an extendable three month period for reply. Accordingly, the above-identified application became abandoned on March 2, 2005. A Notice of Abandonment was mailed on June 10, 2005.

As stated in the prior decision, the December 1, 2004 non-final Office action was properly mailed to correspondence of record. The fact that practitioner did not receive the December 1, 2004 non-final Office action at P.O. Box 2786 does not warrant withdrawal of the holding of abandonment, as P.O. Box 2786 was not part of the correspondence address of record. P.O. Box 2798 was part of the correspondence address of record. An applicant is required to keep the Office informed of its current correspondence address. Any delay in prosecution due to a failure to inform the office of a correspondence address change is delay (not unavoidable) attributed to the applicant. See Ray v. Lehman, 55 F.3d 606, 34 USPQ2d 1786 (Fed. Cir. 1995).

Through good luck, petitioner received two separate Office Notices addressed to P.O. Box 2798. Therefore, petitioner was on notice that the Office had an incorrect (in petitioner's eyes) correspondence address on record. Petitioner should have corrected the record. It is an **applicant's** responsibility to specify an address to which Office will send correspondence 37 CFR 1.33(a) The fact that one mailing was returned to the Office does not shift the burden of

responsibility for establishing and verifying an applicant's correspondence address from the applicant to the Office.

The reconsideration petition under 37 CFR 1.181 is dismissed.

Regarding the petition under 37 CFR 1.137(b), applicant has submitted a terminal disclaimer in reply to the December 1, 2004 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the December 1, 2004 non-final Office action, and authorization to charge required fees.¹ Deposit account no. 12-0913 will be charged the \$1,500.00 Rule 137(b) petition fee and the \$130.00 statutory disclaimer fee.

The petition under 37 CFR 1.137(b) is granted.

After the mailing of this decision the application will be forwarded to Technology Center 3753 for consideration of the reply to the December 1, 2004 non-final Office action, filed on December 13, 2005.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



E. Shirene Willis
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ The statement of unintentional delay presented in the petition does not comply with the current rule. 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.